

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

SECOND SET OF INFORMATION REQUESTS OF SHREWSBURY'S ELECTRIC LIGHT
PLANT TO FIBER TECHNOLOGIES NETWORKS, L.L.C.

D.T.E. 01-70

November 26, 2001

Witness Responsible: Scott C. Lundquist, Vice President of Economic and Technologies, Inc.

SELP 2-1: Please provide a detailed description of all dockets in state and federal courts, in which Mr. Lundquist has testified or qualified as an expert witness in the last five years. For each such docket, please provide the case name, the docket number, a description of the matter at issue in the case, the party for which Mr. Lundquist testified, the subject matter and purpose of the testimony, any prefiled testimony, expert report or exhibits prepared by or for Mr. Lundquist in the case, and a copy of the final decision or order in the case.

RESPONSE: Fibertech objects on the grounds that this request is overbroad and not reasonably calculated to produce admissible evidence insofar as it seeks information on testimony that does not touch on any issues in this case. Notwithstanding this objection, Fibertech responds as follows:

From 1996-2001, Mr. Lundquist has testified before state public utility commissions on telecommunications matters on eleven occasions (in addition to the pre-filed testimony submitted in the instant proceeding). See attached Record of Prior Testimony.

Copies of the public versions of Mr. Lundquist's prefiled testimony in those eleven cases are voluminous, but can be made available for inspection at ETI's offices at Two Center Plaza, Suite 400, Boston, MA 02108 during regular business hours by calling 617-227-0900.

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FIRST SET OF INFORMATION REQUESTS OF SHREWSBURY'S ELECTRIC LIGHT
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D.T.E. 01-70
November 26, 2001

Witness Responsible: Scott C. Lundquist, Vice President of Economic and Technologies, Inc.

SELP 2-2: (a) Please indicate whether Mr. Lundquist has testified or otherwise appeared in any state regulatory proceeding regarding pole attachments.

(b) If the answer to question (a) is yes, for each such proceeding in which Mr. Lundquist has testified or appeared in the last five years, please provide the name of the agency before which Mr. Lundquist testified or appeared, the case name, the case docket number, a description of the particular matter at issue in the case, the party for which Mr. Lundquist testified, the subject matter and purpose of the testimony, any prefiled testimony or exhibits prepared by or for Mr. Lundquist in the case, and a copy of the final decision or order in the case.

RESPONSE: (a) Mr. Lundquist has not testified in any proceedings involving pole attachment ratesetting or terms and conditions. Earlier this year, Mr. Lundquist reviewed Verizon-Maryland's standard pole attachment agreement during the course of developing an adjustment to Verizon-Maryland's claimed pole investment cost in Maryland PSC Docket No. 8879 (the unbundled network elements proceeding). See pages 61-68 of the public version of the Rebuttal Testimony of Scott C. Lundquist, witness for the Maryland Office of People's Counsel, submitted September 5, 2001 in that proceeding.

(b) A copy of this document is provided in response to SELP 2-4.

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Witness Responsible: Scott C. Lundquist, Vice President of Economic and Technologies, Inc.

SELP 2-3: (a) Please indicate whether Mr. Lundquist has any experience drafting, negotiating or reviewing pole attachment agreements.

(b) If the answer to question (a) is yes, please provide a detailed description of the nature of that experience.

RESPONSE: (a) Yes.

(b) See Response to SELP 2-2(a). Also in 2001, Mr. Lundquist reviewed the petitions and attached affidavits that the Georgia Power Company submitted in FCC docket P.A. No. 00-005, in support of the pole attachment rate that it proposed to apply to attachments by Teleport Communications Atlanta, Inc. Mr. Lundquist did not submit testimony in that proceeding.

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Witness Responsible: Scott C. Lundquist, Vice President of Economic and Technologies, Inc.

SELP 2-4: Please provide copies of all presentations, publications, reports or papers authored by Mr. Lundquist which address pole attachments under federal or state laws.

RESPONSE: Fibertech objects on the grounds that this request is overbroad and not reasonably calculated to produce admissible evidence insofar as it seeks information on testimony that does not touch on any issues in this case. Notwithstanding this objection, Fibertech responds as follows:

A copy of the public version of the Rebuttal Testimony of Scott C. Lundquist, witness for the Maryland Office of People's Counsel, submitted September 5, 2001, is attached. Pages 61-68 address Verizon-Maryland's pole investment costs and make reference to pole attachment matters.

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Witness Responsible: Scott C. Lundquist, Vice President of Economic and Technologies, Inc.

SELP 2-5: Please provide copies of each Federal Communications Commission order or decision referred to in Mr. Lundquist's pre-filed testimony in this proceeding.

RESPONSE: Fibertech objects to producing public documents equally available to SELP as to Fibertech. The following FCC decisions are referenced in Mr. Lundquist's pre-filed testimony, and are available at www.fcc.gov, or may be inspected at the offices of Economics & Technology, Inc.:

In the Matter of Southwestern Bell Telephone Company, US West Communications, Bell Atlantic Telephone Companies, BellSouth Telephone Companies Applications for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service, File No. W-P-C-6670 *et al*, Memorandum Opinion and Order, released March 29, 1993 ("Dark Fiber Tariffs Order").

In the Matter of Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket No. 96-149, *Second Report on Reconsideration*, released June 24, 1997 ("Non-Accounting Safeguards Order").

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 and 95-185, *First Report and Order*, released August 8, 1996 ("Local Competition Order").

In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, FCC CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, rel. November 5, 1999 (FCC 99-238) ("UNE Remand Order").

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Witness Responsible:

SELP 2-6: Please provide a copy of Choice One's "Master Facilities Agreement" with Fibertech referred to on page 20 (starting at line 12) of Mr. Lundquist's testimony.

RESPONSE: Fibertech objects to producing this lease on the grounds that it is irrelevant to the issues in dispute and that the lease is competitively sensitive and therefore confidential. The lease is for dark fiber, and since there is no dispute that Fibertech is a dark fiber carrier and it is SELP's position that a dark fiber carrier is not a "licensee" within the meaning of G.L. c. 166 § 25A, the lease is therefore immaterial. In this light, the burden of seeking protective treatment or obtaining authorization from Fibertech's customers to produce outweighs any marginal probative value of the lease. Fibertech further objects to producing the lease of a customer that does not do business in Massachusetts.

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Witness Responsible: Frank Chiaino, Chief Operating Officer, Fibertech

SELP 2-12: Please refer again to Mr. Chiaino's testimony at page 4. Please provide copies of Fibertech's agreements with Choice One, AT&T, Qwest, Allegiance, CTC, Global Crossings, Connecticut Telephone, and the State of Connecticut

RESPONSE: Fibertech objects to producing such leases on the grounds that they are irrelevant to the issues in dispute and that certain of these leases are competitively sensitive and therefore confidential. These leases are for dark fiber, and since there is no dispute that Fibertech is a dark fiber carrier and it is SELP's position that a dark fiber carrier is not a "licensee" within the meaning of G.L. c. 166 § 25A, the leases are therefore immaterial. In this light, the burden of seeking protective treatment or obtaining authorization from Fibertech's customers to produce outweighs any marginal probative value of these leases. Fibertech further objects to producing leases of customers that do not do business in Massachusetts.

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Witness Responsible: Frank Chiaino, Chief Operating Officer, Fibertech

SELP 2-13: Please describe how the letter referred to at page 6, line 16 of Mr. Chiaino's testimony is relevant to the questions in this proceeding, i.e., whether Fibertech is a "licensee" and its fiber is an "attachment" within the meaning of G.L. c. 166, § 25A and 220 C.M.R. 45.02 (See Hearing Officer Ruling dated October 16, 2001).

RESPONSE: Fibertech objects to the characterization of the issues in this proceeding. Fibertech further objects to the question as calling for a legal conclusion. Subject to these objections, the letter referred to is relevant because the Department's treatment of the wholesale provision of dark fiber as a common carrier telecommunications service subject to its authority is conclusive of the question whether Fibertech is a "licensee" within the meaning of G.L. c. 166 § 25A and 220 C.M.R. 45.02.

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Witness Responsible: Frank Chiaino, Chief Operating Officer, Fibertech

SELP 2-14: Please refer to Mr. Chiaino's testimony at page 7.

- (a) Please confirm that "the normal pattern for Fibertech in other locations" with respect to access to poles, conduits, and rights of way, as described on lines 18 through 22, is not required by Federal or Massachusetts law or regulations.
- (b) Please define the term "private sector agreements" as used in line 22. Please explain whether an agreement with SELP would qualify as a "private sector agreement," and why.

- RESPONSE:
- (a) Fibertech objects to part (a) of the request to the extent that it calls for a legal conclusion. Fibertech is not aware of any federal or Massachusetts laws or regulations that require telecommunications providers to obtain pole attachment agreements prior to obtaining local government authorization. Fibertech is aware of local government bodies that require such agreements. Fibertech is also unaware of any federal or Massachusetts laws or regulations that require telecommunications providers to obtain grants of location prior to obtaining pole attachment agreements, and such a requirement is not consistent with custom and practice in the industry as reflected in Fibertech's experience.
 - (b) Private sector agreements refer to agreements between telecommunications providers and a utility. A pole attachment agreement with SELP would qualify as a "private sector agreement" because it is an agreement with a utility as defined in 220 C.M.R. 45.02.

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Witness Responsible: Frank Chiaino, Chief Operating Officer, Fibertech

SELP 2-15: Please refer to page 8, line 19 of Mr. Chiaino's testimony.

- (a) Please define "incumbents."
- (b) Is it Fibertech's position that SELP is such an "incumbent?"
- (c) If your answer to the preceding question is in the affirmative, how does this relate to a pole attachment dispute under 220 C.M.R. 45.00?

RESPONSE: (a) An "incumbent" is used in the same sense as an "incumbent local exchange carrier" in Section 251 of the Communications Act, and includes entities that enjoy the advantages of being an existing sole provider of telecommunications, electric, or cable television service.

- (b) Yes, SELP is an incumbent.
- (c) Fibertech objects to this subpart to the extent it calls for a legal conclusion. Subject to this objection, this is relevant to a pole attachment proceeding under 220 C.M.R. 45.00 because, as stated in 220 C.M.R. 45.01, this set of regulations "effects legislative policy in favor of competition and consumer choice in telecommunications," and where an incumbent such as SELP delays providing nondiscriminatory access to its poles, such obstruction of competition and consumer choice is contrary to the purpose as well as the terms of 220 C.M.R. 45.00.